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The Regulation of Nursing in Nigeria: A Critical Analysis

Cheluchi Onyemelukwe
School of Law and Security Studies Babcock University, Ilishan Remo, Ogun State, Nigeria

Abstract
Nurses provide crucial services and are often, perhaps even more than doctors, in more frequent contact with patients. In Nigeria, the profession and practice of nursing is governed by the law. Yet much of the literature on ethical and legal responsibilities of healthcare providers in Nigeria typically focuses on doctors. There has been little analysis of the legal and regulatory responsibilities of nurses. As knowledge of rights and obligations increase in the general populace, nurses are likely to begin to face threats of litigation, which will likely result to financial losses for the health establishments in which they work and also terminations of nurses' employment. Yet nurses also bear personal risks in delivering care to patients raising the issue of the support and protections available to the professional nurse practitioner within the legal framework. The aim of this paper, therefore, is to provide an overview and analysis of the regulation of the nursing profession in Nigeria. It also addresses the protections available to nurses in the practice of their profession and existing gaps in both the regulatory framework and in the protections provided by the law and regulation as currently contained in the Code of Conduct. It is hoped that this article contributes to a wider discussion of the need to recognise the crucial roles of nurses as part of the health care team, and understanding of the obligations that are imposed on them by law and ethics.
Keywords: nurses, nurse practitioners, regulation, law, ethics, code of conduct, legal obligations.

1. Introduction

Nursing is a very important component of health care provision. In Nigeria, the profession and practice of nursing is governed by the law. Yet much of the literature on ethical and legal responsibilities of healthcare providers in Nigeria typically focuses on doctors. There has been little analysis of the legal and regulatory responsibilities of nurses. The reasons for this can be speculated upon: the lower level of regard in which nurses are held in the health care team and in Nigeria, the focus on the limited numbers of health workers and the ideas of task-shifting in which nurses often feature prominently, the continuing gap in analysis of health and law issues in Nigeria generally, the minimal regard for accountability in the health sphere. This article aims to analyse how the nursing profession is regulated in Nigeria, and examining the impact of law on the nursing profession in Nigeria and the areas of in which the law provides a framework of accountability.

Nurses are an essential part of the health care team. Not only does their work have an effect on human life and health (as in other health professions), their work has significant impact on the experience of patients in the hospital system and the rate at which patients are likely to recover. Particularly in the Nigerian context, they frequently work more closely with patients than other health professionals. The attitudes and even communication styles of nurses can increase or limit the uptake of health programs and hospital services. Thus, it is crucial that nurses understand the responsibilities that the law imposes on them.

As with many health providers, nurses have to comply with certain basic, minimum obligations articulated by Nigerian law. This is not only because this affects the health and quality of lives of their patients but also because they can incur legal liability for failure to comply with legal obligations. The issues of clinical governance, informed consent, privacy and confidentiality arise all aimed towards patients' best interest. As knowledge of rights and obligations increase in the general populace, nurses are likely to begin to face threats of litigation, which will likely result to financial losses for the health establishments in which they work and also terminations of nurses' employment. Yet nurses also bear personal risks in delivering care to patients raising the issue of the support and protections available to the professional nurse practitioner within the legal framework.

The law undergirds the practice of nursing in Nigeria. This article provides an overview of the legal and ethical underpinnings of the nursing profession in the Nigerian context. It describes the Nigerian regulatory environment and analyses some of the key issues that nurses face from a legal, regulatory and ethical perspective. It argues that nurses do an important job in health care and need to be accorded respect and dignity in the Nigerian health landscape and that nurses should comply with extant regulatory codes. It further makes recommendations for the support to be provided to nurses in meeting their professional obligations under the law.

2. The Regulation of Nursing in Nigeria

The law regulates the practice of nursing in various ways. One of the key ways is through the establishment of a professional regulatory council. This establishes nursing as a self-regulating profession in Nigeria which operates under the umbrella of the law; laying the legal foundation for the entry requirements for nursing and establishing professional standards of conduct. I discuss these regulatory aspects below.

The power to make law to regulate professions is vested by the Constitution of the Federal Republic of Nigeria in the National Assembly exclusively.[1] This power has been exercised to enact the Nursing and Midwifery Council Act.[2] The Act amongst other things, establishes the Nursing and Midwifery Council, the professional council which regulates entry into the nursing profession in Nigeria. It is a parastatal of the Federal Ministry of Health and is headed by a Registrar. The Council is composed of a chairman, who shall be appointed by the Minister of Health, the head of the Nursing Services in the Federal Ministry of Health; eight persons, four of whom shall be the heads of the Nursing Services in a State Ministry of Health and two heads of Nursing Services in any of the University Teaching Hospitals, and two nurses from the faculties of nursing in the universities representing each of the four health zones in rotation among the States comprised in each health zone for three years at a time; four persons who shall be tutors in appropriate nursing, public health, psychiatry and midwifery training institutions in Nigeria to serve on rotation among the health zones for three years at a time; two persons to represent the Nursing and Midwifery Association; one person who is adviser on secondary education; two persons to represent the public interest; and two persons to represent the universities offering degree programmes in nursing on rotation, for three years; and one registered medical practitioner who shall be a qualified gynaecologist and obstetrician to serve for three years.[3]

The composition of the Council, in my view, requires at least two adjustments. First, the need to ensure that states are part of the Council is recognised in the appointing of heads of Nursing Services of several States. This may, however, need to be reviewed, given that four states constitutes a significant minority where Nigeria currently has thirty-six states (as opposed to less than twenty when the Act was first passed in 1979). Secondly, there is no requirement for nurses in the private sector to be represented on the Council. The private sector provides a significant amount of care in the Nigerian health landscape. It is important that their voice be represented on the Council so that nurses in that sector become part of the regulatory process and not only remain in the capacity of being regulated.

The Act confers on the Council the responsibility of determining the standards of knowledge and skill to be attained by persons who wish to join the nursing and midwifery profession.[4] Further, the Council is responsible for reviewing those standards as and when necessary. This function allows the Council to regulate entry into the profession. In this respect, the Act also confers on the Council the responsibility of maintaining a register of persons who wish to enter the profession.[5] These persons would have to comply with the standards set out by the Council in order to have their names entered into the register including the requirement that nurses and midwives must pass through specific training, be of good character, and be in good physical condition.[6] The Registrar, who also acts as the Secretary of the Council, is in charge of maintaining the register.[7] The Council accredits nursing education in universities and schools of nursing around the country. A list of approved schools is provided on the Council's website.[8] Failure to pass through an accredited program will result in non-registration of persons who passed through such program by the Council. The Council specifies the minimum standards for nursing programs in the country. The Nursing Regulations and the Midwifery Regulations, subsidiary legislation made under the Act, provide the requirements for training nurses and midwives in Nigeria. Only a registered nurse is permitted to use the initials RN. In practice, after examinations set by the Council are passed, registration takes place, and a license is issued to the successful candidate. Such license, renewable every year, permits the registered nurse to practise the profession after registration by the Council.[9]

Moreover, the Council is given the broad power to regulate and control the practice of the profession. In pursuance of its powers to regulate, the Council has developed the Code of Professional Conduct. The Code requires nurses to provide care with integrity and to place patients at the centre. I discuss the Code in more detail in the following section.

Accompanying the power to regulate conduct is the Council's responsibility to maintain discipline amongst the members of the profession.[10] The Nursing and Midwifery Disciplinary Tribunal is established

[1] The Constitution of the Federal Republic of Nigeria, Cap 21 LFN 2004. See the Second Schedule, Part 1.
[2] *Nursing and Midwifery Council Act, Cap Nursing and Midwifery (Registration etc) Act* Cap. N143, Laws of the Federation of Nigeria, 2004.
[3] Section 2.
[4] Section 1(1) (b).
[5] Section 1(2).
[6] Section 11(5).
[7] Section 6.
[8] Nursing and Midwifery Council of Nigeria, 'Approved Schools' online: <http://www.nmcn.gov.ng/portal/docs/appschls.pdf>
[9] Nursing and Midwifery Council of Nigeria, 'Licensing' - http://www.nmcn.gov.ng/portal/index.php/2014-05-21-11-58-45/2014-05-21-12-13-25/2014-05-21-12-18-05>
[10] Section 1.

under the Act to provide discipline to erring members of the profession.[1] The quorum is five members.[2] The Chief Justice of Nigeria provides the rules of procedure of the Tribunal.[3] The work of the Tribunal is preceded by investigations by the Supervisory Authority, which consists of the chief nursing officer of a State and any committee set up to supervise nurses in a State.[4] It is the responsibility of the supervisory authority to report cases of misconduct and nurses convicted of offences under the law to the Disciplinary Tribunal. Where a registered nurse has been convicted of an offence under the law, or has been found to have committed an infamous act in a professional respect, or is found to have been fraudulently registered, the Tribunal has several courses of action – from the lesser penalty of remind, to suspension and to the grave penalty of being struck off the register.[5] While the Act does not address these, the rules of fair hearing provided by the Constitution of the Federal Republic of Nigeria[6] and addressed in jurisprudence on medical law arising from the hearings of the Medical and Dental Practitioners Disciplinary Tribunal which adjudicates matters relating to medical doctors and dental practitioners, would also be applicable here.[7]

The power of self-regulation, granted to professionals, ensures that the specific professions are able to discipline erring members within the umbrella of law. When used appropriately and effectively, this power encourages continued trust in a profession. Proper exercise of this duty will help manage cases of negligence, anecdotes of which abound in Nigeria. There is very little data in the public space about how well the Council has utilised this power. From anecdotal evidence, however, not many people are aware of this Tribunal. Interestingly, a dichotomy persists in the status of the Disciplinary Tribunal as opposed to the Medical and Dental Council of Nigeria Disciplinary Tribunal. An appeal against a decision of the Disciplinary Tribunal goes to the High Court.[8] The latter Tribunal is given the status of a High Court in Nigeria and appeals go straight from the Tribunal to the Court of Appeal. This underscores the higher status accorded in law to medical practitioners and on the surface could be argued to be unfair to the nursing profession. It is not clear on what basis this is so – whether on the grounds of length or quality of education or on the differences between the weight and impact of doctors' work with regard to patients. At the very least, it underscores the lesser status of the nursing profession in the eyes of the law. This is a matter that requires a re-consideration in light of the importance of nurses in the quality of care provided to patients.

Offences over which nurses can be penalised under the Act include absence from duty which is not a criminal offence but which may lead to suspension for three months.[9] Criminal offences include practising as a registered nurse or midwife without being registered as such, employing an unregistered person, providing training that is unauthorised by the Council.

3. The Code of Conduct and the Law

The Code of Conduct established by the Nursing and Midwifery Council encapsulates the conduct expected of members of the profession. The Code of Conduct is a professional code which combines concepts deriving from ethics, law, and professional reputation requirements. While the law often deals with basic, minimum standards and obligations and carries sanctions for non-compliance, ethics may be described as systematic rules or principles that govern good and right conduct and may go beyond the minimum standards of law and not carry legal sanctions. Professional codes are essential to professions because they impose an added layer of obligations in recognition of the responsibility, trust, confidence and esteem attributed to professions by society. Furthermore, some of the ethical dilemmas that nurses and other professionals face must first be tackled through the lenses of professional codes. In the words of Epstein and Turner, "An effective ethical code for nursing practice must provide guidance on managing ethical problems that arise at the societal level, the organizational level, and the clinical level."[10]

The Code of Conduct is a key part of the regulation of nurses along with disciplinary processes when

[1] Section 17.
[2] Third Schedule, paragraph 1.
[3] Third Schedule, paragraph 2. The Nurses (Disciplinary Tribunal and Assessors)Rules have been made under this.
[4] Section 16.
[5] Section 18.
[6] Section 36.
[7] Such cases include: *Denloye v Medical and Dental Practitioners Disciplinary Tribunal* (1968) 1 All N L R 306; *Olaye v Medical Dental Practitioners Disciplinary Panel* (1997) I NWLR (pt 550) 556; *Okonkwo v Medical and Dental Disciplinary Tribunal* (2001) 7 NWLR (pt 211) 506.
[8] Section 18(4).
[9] Section 19.
[10] Beth Epstein and Martha Turner" The Nursing Code of Ethics: Its Value, Its History" (2015) 20:2 The Online Issues in Nursing, online: <http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-20-2015/No2-May-2015/The-Nursing-Code-of-Ethics-Its-Value-Its-History.html>

there is non-compliance. The Code, like many professional codes, establishes a minimum ethical standard, is often broadly directional rather than aimed to solve specific cases or activities, and is drafted by members of the profession, who are in the best position to know what it requires to provide the needed standard of care.[1]

From a legal perspective, the Code of Conduct has legal implications. Developed under powers conferred on the Council by the Act, the Code of Conduct is subsidiary legislation and thus has indirect force of law. It therefore articulates the professional ethics as well as the legal obligations of nurses in Nigeria. These requirements would be a key consideration in any legal actions taken against a nurse in his or her capacity as a nursing professional and would be a key instrument in determining the level of care and competency required to be exhibited by the nurse. Amongst other things, the Code requires nurses to provide care without discrimination, to respect the Constitution of the Federal Republic of Nigeria. The Code also addresses such matters as negligence, the need to obtain informed consent, to maintain confidentiality. These duties are well-recognised in Nigeria's jurisprudence, although most of the reported cases are cases dealing with doctors rather than nurses. These matters are also addressed in Nigerian legislation and jurisprudence, and ideally these should work seamlessly with the Code of Conduct. Below I discuss the provisions of the Code of Conduct alongside Nigerian law and jurisprudence, addressing areas of concurrence and divergence and the impact of these on the regulation of the nursing profession.

3.1 The Duty of Non-Discrimination

The first professional duty required in the Code of Conduct is the duty to refrain from discrimination on various grounds. The nursing professional is required to provide care to all without reference to age, religion, ethnicity, race, nationality, gender, political inclination, health or social economic status. This is in accord with the right to freedom of discrimination which all Nigerians should enjoy by virtue of the fundamental right enshrined in the Constitution.[2] More inclusive, open-ended language which would include a phrase such as "and any other grounds" would have been more helpful. For example, a prostitute can be discriminated against on the basis of the kind of employment she holds. Health status, for example HIV positive status or Hepatitis B positive status, is another ground of discrimination which may be practised by unethical nursing professionals. In any event, the *HIV and AIDS Anti-Discrimination Act* prohibits discrimination on the grounds of HIV positive status. The Act states: "It is an offence to discriminate against any person on the basis of their real or perceived HIV status by a) denying or removing from such person any treatment, medication or any supporting or enabling facility for their functioning in society; b) refusal to accept and offer treatment by a qualified medical personnel except in such cases when the special care or facilities specifically required for treatment of HIV and AIDS does not exist in the health facility."[3] Nurses are expected to comply with the law in this respect, therefore, and avoid discrimination against persons on the basis of perceived or real HIV positive status. But HIV status is not the only ground that is not covered by the Code. Other grounds such as employment and other disease conditions remain unprotected from discrimination by virtue of the wording of the Code of Conduct. It is hoped, therefore, that future revisions of the Code will take this into account.

3.2 Duty to Avoid Negligence

Negligence involves failure, perhaps out of carelessness or recklessness, to act in a manner in which a reasonable person is expected to act under similar circumstances, acting in a fashion in which a reasonable person would not. It is the failure to exercise the care that the circumstances demand.[4] Negligence occurs when one person who had a duty of care to another breaches that duty and by so doing causes that other person to suffer harm. To break it down, the elements of negligence include the existence of a relationship, in this case, nurse/patient relationship; a duty of care, thus the patient cannot claim in negligence against every nurse in the facility but against the nurses directly in charge of his/her care; a breach of that duty when the nurse fails to exhibit the standard of skill and care the law requires of him.[5] The determination of what precisely is the standard is one of the prime functions of the court. Generally speaking, the standard of care depends upon the nurse's position and experience. Therefore a higher standard would be generally of a matron than of a junior nurse. Finally, a resulting harm must have been suffered as a direct or foreseeable consequence of the breach – There must be harm, otherwise a negligent act is not actionable. It is the occurrence of damage, which entitles the patient to sue in negligence. Even if a nurse has been careless or has acted in a manner which even a layman might consider negligent, this will not give any right to an action against the nurse. The patient's claim is for compensation for what he has suffered from the s negligent conduct is only relevant so far as it was the cause of the patient's

[1] Ibid.
[2] *Constitution of the Federal Republic of Nigeria*, Section 32.
[3] Section Section 6 of the HIV and AIDS Anti-Discrimination Act, 2014.
[4] Odinaka v Moghalu (1992) 4 NWLR (Pt 233) 1
[5] See *Hedley Byrne & Co Ltd v Heller & Partners Ltd,* 1935] 94 K.B. 791.

suffering. Nurses must therefore show due care and diligence in the course of their employment and exhibit the level of care required of a professional with their training.

The case of *Olowu v The Nigerian Navy*[1] is instructive. In that case, a doctor was found negligent when he failed to attend to a pregnant woman in labour who had a previous history of complication. The doctor failed to attend to the woman in time and her womb ruptured, she suffered extensive damage to her uterus and she lost the baby. He was found liable by a court martial and was demoted in rank. He brought an action to reverse the decision of the court martial. The action failed. This case illustrates not only the long-lasting effects of negligence but also the potential adverse impact on employer/employee relationship. This is particularly serious since the employer may also be sued and be found vicariously liable. Nurses therefore have a duty to perform their functions with care to prevent harm to the patient, but also reduce detriment to their employers. Grounds for negligence may include failure to keep adequate records or to safeguard existing records; failure to use due care in carrying out one's duties; non-disclosure of material information; lack of professional knowledge and skill; failure to consult with appropriate bodies and persons such as failure to report to a doctor when necessary. Failure to comply with professional rules and standards and Code of Conduct may also be considered negligence where it results in harm.

There are not many Nigerian cases on negligence that have been brought against nurses. They have mostly been brought against doctors or hospitals. For example, in *Igbokwe v University College Hospital*,[2] a doctor instructed a nurse to keep an eye on a mental patient. The nurse failed to do so. The patient fell from the third floor and died. The action was brought against the teaching hospital where the incident occurred. Still the same principles would apply to nurses. As more people begin to understand the law, and become aware of their rights, nurses could begin to become targets of litigation. Negligence may also be a criminal offence where the extent of the negligence can be classified as gross negligence.[3]

3.3 Duty of Informed Consent

The Code of Conduct also addresses matters that are well covered in Nigerian jurisprudence such as informed consent. It requires that Nurses are required by the Code to present information in a manner that is easily understood and to provide information that will enable a patient make an informed choice about whether or not to consent to treatment. It requires nurses to presume that every patient is legally competent until proven otherwise and that legally competent patients can make decisions for themselves even if this results in harm to themselves. In this respect, the Supreme Court of Nigeria in *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal*[4] held that consent must be obtained from an adult of sound mind prior to treatment. Failure to do so would constitute a breach of the fundamental right to privacy. As required by law, the Consent must be competent, that is, it must be given by someone who has capacity to do so – an adult of sound mind, or a guardian of the minor to be treated or an appropriate guardian for the mentally ill. The Code of Conduct prescribes 18 as the age of capacity. This is in line with the definition of a child under the *Child Rights Act* where a child is defined as a person under the age of 18.[5] The consent must also be free, that is, not provided under duress. It must also be informed, that is, it must contain all the material information, be communicated in language that can be understood by patient, be communicated clearly, contain information about all the material, direct and foreseeable risks of treatment. The *National Health Act*, federal legislation on health, also provides similarly that a health professional must obtain the informed consent of the patient.

However, the Code goes on to advocate respect for a patient's decision to refuse a health care intervention even where such refusal may result in harm to themselves or even death. This aligns with the decision in *Okonkwo v Medical and Dental Practitioners Disciplinary Council* where a Jehovah's Witness was held to be competent to refuse blood transfusion, which refusal led to her death. However the Code adds that such refusal may extend to refusing a medical procedure even if it will lead to the death of a foetus. In such a case, the right recourse would be to get an order of court. It must be noted that under Nigerian law, a foetus is considered a life worthy of protection by law. Abortion is a criminal offence.[6] Furthermore, Nigerian jurisprudence does not allow the parent to make a decision that may affect the life and safety of a child in an adverse way. For example, in *Esanubor v Faweya*,[7] the Court of Appeal held that a mother could not refuse blood transfusion that would save the life of her infant. English jurisprudence has dealt with similar cases[8] which indicate that the courts would lean in favour of saving the foetus, despite the fact that the law recognizes the

[1] *Olowu v The Nigerian Navy* Suit No: SC.182/2007
[2] *Igbokwe v University College Hospital* (1961) WNLR 173.
[3] Section 343 of the Criminal Code. See also, Kim v State (1992) 4 NWLR (Pt. 233) 17.
[4] *Okonkwo v Medical and Dental Disciplinary Tribunal* (2001) 7 NWLR (pt 211) 506.
[5] Section 21 of the *Child Rights Act* Cap 21 Laws of Federation, 2004.
[6] *Esanubor v Faweya* (2008) 12 NWLR (PT 1102) 7942.
[7] *Criminal Code Act,* section 228-230.
[8] See for example, *Re T* [1992] 1 All ER 649 at 652-653; *Re S (adult refusal of treatment*) [1992] 4 All E R 671.

woman's right to terminate a pregnancy. For example, in the case of *Re S (adult: refusal of treatment)*,[1] where a 30 year old woman refused to submit to emergency caesarean section on religious grounds, the court granted an order, allowing the hospital to carry out the procedure in order to save the life of the baby. A subsequent decision *St George's Healthcare NHS Trust v S (Guidelines); R v Collins ex p S*, has however reiterated the position that the autonomy rights of the woman take precedence over the rights of the baby.[2] This is, however, very different from the situation in Nigeria where there is no right to terminate a pregnancy. Would Nigerian courts require pregnant women that are Jehovah's Witnesses to receive blood transfusion where the life of the foetus is at stake regardless of the privacy right of the mother? In Nigeria, the uptake of treatment procedures such as caesarean sections which are sometimes required to save the life of the mother is relatively low, in part due to cultural and religious factors, contributing to Nigeria's high maternal mortality rates. Would a woman in need of such procedure whose baby would most likely die who refuses such procedure be compelled to have such a procedure? The jurisprudence on this is not clear. The Code of Conduct states that the recourse in these cases is to resort to court as occurred in *Esanubor v Faweya* for an order. In the event of an emergency, it seems appropriate to argue that a procedure may be provided and the court approached for ratification. The Code of Conduct specifies that emergency care may be provided without the consent of the patient. Further clarification of this aspect of the Code in light of Nigeria's peculiar context and challenges may help provide guidance to the courts on this matter.

In regard to informed consent for the mentally ill, the Code of Conduct specifically recognizes that even the mentally ill are not exempt from the principle of informed consent. Unfortunately, the Code does not specifically define the exact parameters of consent for nursing mentally ill patients such as explicit recognition of periods of lucidity and the impact on consent. It merely states that nurses must ensure "that when clients and patients are detained under statutory powers (e.g. Mental Health Act), you know the circumstances and safeguards needed for providing treatment and care without consent."[3] Thus, in situations of involuntary commitment, nurses are to seek guidance from the law. At the present time, there remains a vacuum in this area of law because the *Lunacy Act* is outdated and its provisions on consent do not accord with international human rights standards.

3.5 Duty of Confidentiality

The Code of Conduct also recognises that a patient has the right to confidentiality and that a nurse must keep confidential patient's information. Thus it states that a nurse is to "Keep information and records of the client confidential except in consultation with other members of the health team to come up with suitable intervention strategies or in compliance with a court ruling or for protecting the consumer and the public from danger." The ethical values of autonomy or respect for persons as well as the more utilitarian concept of recognizing the adverse impact of not providing confidentiality which may lead to non-uptake of treatment, nurses not getting adequate information to make appropriate treatment decisions all lay the foundation for the importance of confidentiality. . Communication is key to effective patient care. Patients are likely to feel more comfortable providing information where there is confidence in the safekeeping capacity of the health care provider. Nurses receive confidential information regularly in the course of work, some of such confidential information may even extend outside clinical care, such as information about family relationships or financial situations. Such information must be kept confidential by the nurse. Unauthorised disclosure of information destroys the confidence of the patient in the health system, and is a violation of the law. The *National Health Act*, the *Lagos State Health Sector Reform Law*, the *HIV and AIDS Anti-Discrimination Act,* amongst other extant legislation contain similar provisions. The Code of Conduct does not state the parameters of this duty or the exceptions. However, the National Health Act provides the exceptions including where the patient consents in writing, where the law or a court requires it, and on public health grounds for example in the case of infectious diseases[4] or disclosure to the health facility or other providers for the purposes of treatment.[5]

In respect of confidentiality, context is an important consideration. In Nigeria, the culture elevates family and many patients come into consultations with family members and are supported by family members while receiving treatment. The nurse is therefore expected to understand the context as well as her professional obligations and draw the delicate balance required. It is important in this respect to remember the requirement of the Code that nursing professionals should "consider the views, culture and Beliefs of the client/patient and his family in the design and implementation of his care/treatment regimen." The requirement for confidentiality while important should take into account the context to better address the needs of the patient. This may require

[1] *Re S (adult refusal of treatment*) [1992] 4 All E R 671
[2] St George's Healthcare NHS Trust v S (Guidelines); R v Collins ex p S [1998] 3 All ER673. These cases are discussed in J K Mason & GT Laurie, Mason & McCall Smith's Law and Medical Ethics, 9th Edition(Oxford: Oxford University Press, 2011) at 89-93.
[3] Code of Conduct
[4] Section 26 of the *National Health Act*.
[5] Section 27 of the *National Health Act*.

actively seeking the consent of the patient, where possible, to share information with family members where necessary.

3.6 Duty to Maintain Good Attitudes

Other requirements of the Code of Conduct relate to the attitudes of nursing professionals. In this respect, the Code provides amongst other things that nurses are to desist from fighting or stealing, be courteous, honest and resourceful. They are also required to be punctual to duty and hand over, patients and equipment physically after duty, to switch off telephone/handsets when providing care to clients/patients and when teaching in the classroom and reject any form of gift, favour or gratification which might appear to have undue influence or advantage towards obtaining preferential treatment. While these may seem like common sense, my visits to various hospitals indicate the need to continue to reinforce these attributes of basic courtesy and decency. It is commonly acknowledged that some nurses, particularly in the public hospitals, are often rude, curt, dismissive of, and indifferent to patients.[1] This is a serious challenge that requires enforcement of the Code beginning with education. The attitudes of health workers generally, and nurses in particular, is essential to the uptake of treatment. A rude and condescending attitude could prevent a patient from returning for needed, ongoing treatment. An intimidating attitude could deter a patient from sharing useful information that may help the health team figure out the problem and solve it. It also affects confidence in the health system, perception of the quality of care received and patient satisfaction, all of which are crucial matters in promoting health-seeking behaviour such as early recourse to treatment.

3.7 Emergency Treatment

The Code of Conduct provides that a nurse must provide emergency treatment. It states that nurses must "provide care in emergencies where treatment is necessary to preserve life without clients/patients consent, if they are unable to give it, provided that you can demonstrate that you are acting in their best interests."[2] This is in conformity with the National Health Act, which also provides that: a health care provider shall not refuse a person emergency medical treatment for any reason whatsoever.[3] However, the National Health Act also makes it offence, for which the health care provider would be liable on conviction to a fine of 100,000 naira or to imprisonment for 6 months or both.[4] This is a key requirement for health professionals, including nursing professionals because stories abound of persons who are refused emergency treatment in Nigeria for failure to pay prior to treatment, including stroke and heart attack victims and other persons with sudden illnesses, accident victims who die preventable deaths, sexually violated women who are turned away for lack of payment and patients who suffered gunshot wounds for failure to provide police reports. There are questions about such treatment should be funded: should the health facility fund it or would the government fund it from the emergency treatment funding portion of five percent of the Basic Healthcare Provision Fund, an intervention fund to be funded by the Federal Government under section 11 of the National Health Act. While these matters are being sorted out, however, it is important to understand that nurses have a professional and legal obligation to provide emergency treatment to persons who come into their health facility for such treatment.

Other Legal Requirements

Outside of the provisions of the Code of Conduct, there are other legal requirements which govern the conduct of a nursing professional. These include:

Best Interests of Children – The Child Rights Law 2007 of Lagos State requires that all persons, including health professionals like nurses must act always in the best interests of the child.

Professional Indemnity – The National Health Insurance Act requires that nurses, like other professionals take out professional indemnity to cover any potential legal liabilities in the course of doing their work.[5] This is usually perceived to be the responsibility of doctors but a clear reading of the law indicates that this compulsory obligation attaches to all health professionals.

4. Protections for Nurses: Some Recommendations

It is important to prescribe standards of conduct required of nursing professionals. In my view, it is crucial also to ensure that nursing professionals are granted certain protections by law and policy in the course of providing care to patients. This will not only provide them with optimal conditions in which to carry out their work, it would equip them with the requisite skills necessary for caring for persons who find themselves in situations of

[1] See for example, Nurses and Their Attitudes to Patients, *PM News*, June 2011, online: <http://www.pmnewsnigeria.com/2011/06/28/nurses.-and-their-attitude-to-patients/>

[2] Code of Conduct.

[3] Section 20(1).

[4] Section 20(2).

[5] Section 45 of the *National Health Insurance Scheme Act*. A similar provision is also found in the *Lagos State Health Management Agency Law*, 2015.

vulnerability. In this regard, I identify the following as essential: education, encouraging professional indemnity insurance, addressing inter-professional rivalry and lesser professional status, tackling bullying and revising the Code of Conduct. I discuss these in turn below.

4.1 Education on Legal and Ethical Obligations of Nurses

A certain standard and level of education is required to become a registered nurse in Nigeria. To gain more skills, particular more current skill and knowledge, continuing education is vital. However, beyond the technical skills required, the ethics and law of nursing are also key. Much of the discussion above has indicated that law and ethics play important roles in the regulation of nurses and in key areas such as patient safety and effective communication. It is essential that on-going education in these matters be provided to nursing professionals in the public and private sectors to encourage better attitudes and conduct, which will ultimately benefit the system. On-going trainings and capacity building efforts should include practical case studies and the impact of ethics and law for greater impact. The Code of Conduct should specifically require continuing trainings in bioethics and law during prequalification training as well as post-qualification.

4.2 Encouraging professional indemnity insurance

It is important to educate nurses on the importance of taking out professional indemnity insurance to insure against such potential steps. At the present time, professional indemnity insurance is taken to be the responsibility of doctors and health facilities. However, this is not the intendment of the law. With increasing awareness of patients' rights, it is not implausible that more litigation may be undertaken as health professionals in general, and nurses in particular, with potentially adverse effects on health facilities.

4.3 Addressing inter-professional rivalry and lesser professional status

A mere visit to many health facilities in Nigeria would make it clear that nursing professionals are frequently looked upon as lesser mortals in the healthcare team. Such lower status can be attributed to general society, while some are attributable to the law (which, for example, places the disciplinary tribunal of nurses on a lower pedestal). Yet such a visit would convince one that nurses are vital to the quality of care received by a patient. Active steps must be taken by the government to re-orient mind-sets in this regard. Other health care professionals, particularly doctors, must make effort to re-orient their profession towards a collaborative approach to health care where a team, regardless of the professional who heads it, is in fact a team and not an autocratic hierarchy.

4.4 Developing Appropriate Complaints Processes

It is important the appropriate complaints processes and channels are developed for nursing professionals who have complaints about their treatment at work. These complaints channels must be established at all facilities and extend beyond facilities. They must also have safeguards and mechanisms for protecting whistleblowers. In my work, which includes training health professionals, I have found that this is surprisingly often not readily available, particularly to younger nursing professionals. This is work that the Nursing and Midwifery Council must take up and firmly establish.

4.5 Awareness of Protections Available Under the Law

Alongside education to facilitate greater knowledge of their legal and ethical obligations, nursing professionals must also be made aware of the protections that the law offers them. Some of such protections are found in the National Health Act. This Act provides for conscientious objection by health professionals such as nursing professionals.[1] This entitles the nurse to refuse to engage in the provision of services that are against one's conscience by reason of their faith or on other grounds. This legislation also provides that health professionals (including nursing professionals) are entitled to protection from injury, damage to property, or disease transmission.[2] Thus health facilities are expected to put in place policies and protocols to prevent or minimise the transmission of diseases to health workers. The Act also provides protection from bullying by a patient. It states that a nurse may refuse treatment to a patient who is verbally, physically or sexually abusive.[3] In addition, it provides that a health worker will be entitled to indemnity for any damage or injury suffered as a result of providing services in the health facilities.[4] This also aligns with the provisions of the *Employee Compensation Act, 2010*.

[1] Section 21 of the National Health Act.
[2] Section 21 of the National Health Act.
[3] Section 21 of the National Health Act.
[4] Section 22 of the National Health Act.

4.6 Revising the Code of Conduct

It is not clear what the process of making the Code is or how long the Code has been in place. It is crucial to clarify these areas as well as to update the Code from time to time. The current Code, while it addresses many key points, does not yet reflect recent legislation, nor does it provide guidance in certain important areas such as mental health. Matters such as assisted reproductive technologies and surrogacy and the nurse's role are not addressed even though these are becoming more relevant in Nigeria. It does not address important matters such as conscientious objection, whistleblowing, complaints mechanisms and procedures, insurance requirements including the expectations of nurses from the health establishments in which they work and industrial action. Industrial actions are particularly problematic, with increasing numbers of strikes by health professionals in Nigeria and the attendant consequences to the health of patients. What is the moral obligation of nursing professionals in these situations?

Conscientious objection is highlighted in the National Health Act but it is not fully addressed. The Code of Conduct could help flesh out the details: when can a nurse plead conscientious objection? What are limits of such objection? What should be the response of the health facility? Violent and abusive behaviour in the work place is another essential matter. The Code of Conduct merely states that nurses should not fight. But what if they are threatened or even physically assaulted, what should be their recourse? In respect of whistleblowing, the nurse is required by the Code of Conduct not to participate in unethical procedures by a health care team. But it does not go forward to provide any directions about what a nurse is to do in that situation: make an application stating one's conscientious objection? Whistle blow? To whom?

It will be recalled that a nurse died during the Ebola crisis in Nigeria in 2004 amongst ofther health professionals. Nurses take personal risks in the course of caring for patients. What are the limits of personal risks that they can undertake in different situations, including situations of public health emergencies? These and many other issues remain outstanding and should be addressed in a revised and updated Code of Conduct.

5. Conclusion

In the foregoing pages, I have discussed and analysed the regulation of nursing in Nigeria. As discussed, the law plays a key role in the regulation of nurses. The Nursing and Midwifery Council, the professional regulatory body is established by law and is granted powers to regulate nursing. It has established a Code of Conduct to regulate the conduct of nursing professionals. Key provisions of the Code have been discussed and analysed, particularly in light of relevant legislation and jurisprudence.

I have also highlighted other provisions of law which are relevant to the practice of the nursing profession in Nigeria apart the provisions of the Code of Conduct. There is need to revise and update the Code in light of recent legislation as well as recent advances in health technologies and health rights. Some of the language currently used in the Code requires a revision, while some matters that are left out need to be addressed. Further, as I have suggested, it is hardly sufficient to emphasise the legal, ethical and professional responsibilities of nurses in Nigeria without examining the protections provided by the law. Nor is it helpful to neglect addressing the areas in which more efforts are required to ensure that nurses are able to protect themselves from personal harm, occupational hazards and other risks that come with the jobs they do.

It is hoped that this article contributes to a wider discussion of the need to recognise the crucial roles of nurses as part of the health care team, and understanding of the obligations that are imposed on them by law and ethics. There is certainly a need to encourage a better societal appreciation of the profession. This may help to manage inter-professional rivalry in health care in Nigeria while also ensuring more effective care following from the nursing profession's understanding of their legal and ethical obligations to patients and other health care users.